

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

MALCOLM M. ROBINSON, Petitioner

V.

NO. 4:95CV71-S-O

MISSISSIPPI DEPARTMENT  
OF CORRECTIONS, Respondents

O P I N I O N

This cause comes before the court on the petition of Malcolm M. Robinson for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Petitioner seeks a reduction in the time he has to serve.

Petitioner states that he was convicted in the Circuit Court of Washington County, Mississippi, on January 5, 1995, following pleas of guilty to business burglary, house burglary, and auto burglary. He received concurrent sentences of five years, five years, and six years on the charges.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

It is well settled that a state prisoner seeking habeas corpus relief in federal court is first required to exhaust his

available state remedies. 28 U.S.C. §2254(b) and (c)<sup>1</sup>; see also Rose v. Lundy, 455 U.S. 509 (1982). More specifically, a petitioner must present his claims to the state courts in such a fashion as to afford those courts a fair opportunity to rule on the merits. Picard v. Conner, 404 U.S. 270 (1971); Dispensa v. Lynaugh, 847 F.2d 211, 217 (5th Cir. 1988). A habeas corpus petitioner must provide the state's highest court with a fair opportunity to pass upon the issues raised in the petition for federal habeas corpus relief. Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988) (citing Carter v. Estelle, 677 F.2d 427, 443-44 (5th Cir. 1982)).

Petitioner states that he has neither filed a direct appeal of his conviction nor a post-conviction action of any sort. Clearly his filing to this court is premature and must be dismissed. After exhausting his available state remedies,

<sup>1</sup> 28 U.S.C. §2254(b) and (c) provide:

- (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
- (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

petitioner will then be entitled to proceed in the federal district court.

A final judgment in accordance with this opinion will be entered.

THIS the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

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CHIEF JUDGE